

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment to the Commission's
Rules Regarding a Plan for
Sharing the Costs of
Microwave Relocation)

) WT Docket No. 95-157

) RM-8643

)
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COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

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May 28, 1996

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In its Further Notice in the above-referenced docket, the Commission wisely seeks comment on whether the three-year relocation period it has adopted for the 30 MHz spectrum blocks would be workable for the dramatically smaller 10 MHz spectrum blocks. We believe strongly that the three-year period adopted by the Commission, and its "voluntary" negotiation period, would handicap the deployment of PCS in the 10 MHz D, E and F spectrum blocks and substantially depress auction values. Accordingly, we suggest in these comments that the "voluntary" period be eliminated for Blocks D, E and F or, as a much less preferable alternative, that the voluntary period for those blocks begin running on April 5, 1995, the date upon which the period began running for the Block A and B licensees.

**I. THE COMMISSION SHOULD ELIMINATE THE VOLUNTARY
NEGOTIATION PERIOD FOR THE D, E, AND F BLOCKS.**

The Commission should eliminate the voluntary period for the D, E, and F blocks because the presence of microwave incumbents in the 10 MHz block virtually precludes the deployment of PCS until after expiration of the two-year period. In short, the amount

of spectrum in the 10 MHz block is insufficient to allow PCS licensees to share spectrum with incumbents during negotiations in the voluntary period. Without the ability to share spectrum by circumventing microwave users, D, E, and F block licensees will have to await incumbent relocations before they can begin offering PCS service. Because incumbents have no obligation to relocate or even negotiate during the voluntary period, PCS licensees will be severely handicapped in their efforts to begin operations for two years if the Commission retains a voluntary period for the D, E, and F blocks.

The critical issue here is delay -- the delay PCS licensees in the D, E, and F blocks will experience due to their inability to effectively share spectrum with microwave incumbents in 10 MHz spectrum blocks. Unlike microwave incumbents in the 30 MHz block, microwave incumbents in the 10 MHz blocks pose a greater threat of interference to PCS operations. Because of this greater interference potential, the use of a two-year voluntary period for microwave relocation will result in the delay of these blocks being available to provide highly demanded PCS service to the American public.

In 30 MHz spectrum blocks, PCS licensees have a greater opportunity to share spectrum because 30 MHz of spectrum provides a greater amount of spectrum for licensees to maneuver around incumbents through the use of spectrum sharing technologies. Except in cases where microwave users occupy the entirety of the 30 MHz spectrum block, if incumbents refuse to negotiate or relocate during the voluntary period, PCS licensees can still proceed with deployment of their system through the use of sharing technologies. However, such spectrum sharing would be significantly more difficult in the 10 MHz block. Microwave users in the 1850-1990 MHz band utilize

microwave beams that are 10 MHz wide. The use of 10 MHz microwave beams in 10 MHz blocks leaves little room for PCS licensees to engage in spectrum sharing. There simply is not enough excess spectrum available to PCS licensees in the 10 MHz block to circumvent or work around incumbents using spectrum sharing technologies. Consequently, licensees in the 10 MHz block are precluded from using the spectrum until the incumbents have actually relocated.

Because of their inability to engage in spectrum sharing, licensees in the 10 MHz block are far more dependent upon incumbent relocations to began operations than licensees in the 30 MHz block. Such relocations, however, will not be possible if the Commission imposes the voluntary period on the D, E, and F blocks. The fact that incumbents are not obligated to engage in negotiations -- much less relocate -- during the voluntary period has a devastating effect on PCS licensees who lack spectrum sharing capabilities. The net result of the voluntary period coupled with licensees' inability to share spectrum is a critical delay in the deployment of PCS in the D, E, and F blocks. Although elimination of the voluntary period will not result in automatic relocations, the immediate commencement of the mandatory period will at least require incumbents to negotiate and thereby alleviate some of the burden facing licensees.

The absence of a prompt and fair microwave relocation in the D, E, and F blocks will cripple PCS' ability to emerge as a viable competitor in the local loop and to cellular. To protect D, E, and F block licensees from lengthy and detrimental delays, the Commission should eliminate the voluntary period and allow the one-year mandatory period to begin immediately.

APC recognizes that certain microwave incumbents with paths in the D, E, and F blocks may argue that it is unfair to alter the relocation rules at this stage. However, elimination of the voluntary period would not damage incumbents because the prospect of relocation comes as no surprise for virtually all of these incumbents. Many of the incumbents in the D, E, and F blocks are also located in the A and B blocks. These incumbents have been in the process of negotiating with (or at least receiving offers of negotiation from) A and B block licensees.

Because incumbents who are located in both the A and B blocks and the D, E, or F blocks have been on notice of their upcoming relocation, they should have begun relocation preparations. This is particularly true given that most incumbents are interested in relocating their entire systems as opposed to the piece-meal relocation of those links located in the A and B blocks. Thus, because many incumbents have begun relocation preparations as a result of the A and B block negotiations, eliminating the voluntary period and thereby accelerating the potential relocation date would not unduly prejudice incumbents in the D, E and F blocks.

Moreover, the protections that are explicit even in the mandatory period will fully protect all microwave incumbents from incurring any costs or service degradation whatsoever. No Commission licensee has a vested right to its frequencies, and the relocation plan adopted by the Commission for the "mandatory" portion of its rules is more than fair to microwave incumbents.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD ALLOW THE START DATE FOR THE VOLUNTARY NEGOTIATION PERIOD FOR THE D, E, AND F BLOCKS TO EXTEND BACK TO THE BEGINNING OF THE A AND B BLOCK VOLUNTARY PERIOD.

In light of the limitations facing PCS licensees in the 10 MHz blocks, the single best and most straightforward way to rationalize the regulatory structure at issue here would be to eliminate the voluntary period. If, however, the Commission decides to retain the voluntary period for those blocks, it should at least order the start date of the voluntary period to extend back to the beginning of the voluntary period for the A and B blocks. The heightened interference concerns in the D, E, and F blocks warrant the start date for voluntary negotiations for those blocks to coincide with the voluntary period for the A and B blocks.

The two-year voluntary negotiations period for the A and B blocks began on April 5, 1995.^{1/} By allowing the voluntary period for the D, E, and F blocks to begin running from April 5, 1995, the Commission would effectively shorten the voluntary period to a little over a year. For the reasons discussed above, shortening the voluntary period will shorten the harmful delay D, E, and F block licensees will experience in offering PCS service. That date is eminently fair because it is the date upon which 2 GHz incumbents were formally put on notice that the period for relocation and negotiation had begun.

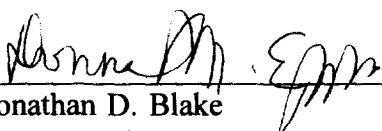
^{1/} See Wireless Bureau Announces Initiation of Voluntary Negotiation Period for A and B Block PCS Licensees and 2 GHz Incumbent Microwave Licensees, DA 95-872 (April 19, 1995).

Using the April 5, 1995 start date is a equitable compromise for both PCS licensees and incumbents. With the April 5, 1995 date, incumbents would have a reasonable amount of time to prepare for relocation, thereby limiting any potential for disruption to their systems. Similarly, PCS licensees would benefit because a shorter voluntary period lessens the harmful effects of their inability to share spectrum and will lead to a more rapid deployment of PCS services. Thus, to lessen the harsh effects of the voluntary period, the Commission should protect D, E, and F licensees by ordering the start date for the voluntary period to coincide with that of the A and B blocks on April 5, 1995.^{2/}

Respectfully submitted,

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May 28, 1996

^{2/} Regardless of whether the Commission eliminates the voluntary period or merely shortens it, it clearly should not lengthen the mandatory period. A substantial portion of the value of the mandatory period arises from the deadline imposed by the end of the period -- a value that would be eviscerated if the mandatory period were to be lengthened.